

RAY WHEELER
ILLA GENE WHEELER

IBLA 80-719

Decided June 26, 1981

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting color-of-title application. ES 17852.

Affirmed.

1. Color or Claim of Title: Generally -- Color or Claim of Title: Applications

Where the record does not show any instrument purporting on its face to convey the land, sought under a color-of-title application pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1976), not later than Jan. 1, 1901, the applicant has not made out a meritorious class 2 color-of-title claim.

APPEARANCES: Ken Reeves, Esq., Harrison, Arkansas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Ray and Illa Gene Wheeler have appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated May 16, 1980, rejecting their color-of-title application, ES 17852, for failure to satisfy the requirements of the Color of Title Act, 43 U.S.C. § 1068 (1976). Appellants' application was filed for 40 acres of land situated in the NW 1/4 SW 1/4 sec. 24, T. 14 N., R. 17 W., fifth principal meridian, Searcy County, Arkansas.

In their application appellants do not specify whether the claim of color of title is class 1 or class 2, but state that the basis for the claim is "[r]ecord title for more than 20 years plus payment of taxes." Appellants also indicated in their application that there were

no structural or cultural improvements on the land on the date of purchase; that none had been added; and that the land had not been cultivated. In the letter accompanying the application, dated August 25, 1977, appellants' attorney at that time stated that the taxes on the land "have been paid by our client and his predecessors in title since the same was conveyed to Roy Sturgis [from the State of Arkansas] on 3/8/51." The letter also states: "The first instrument appearing in the chain of title is a Tax Forfeiture from the Searcy County Collector to the State of Arkansas in the year of 1922 for the unpaid 1921 taxes. Then the chain of title comes on down, consecutively, to our client."

In rejecting appellants' application, BLM held that appellants had failed to establish a class 1 claim because they did not allege any valuable improvements or cultivation. BLM also held that appellants had failed to establish a class 2 claim because they did not allege a chain of title beginning no later than January 1, 1901. BLM stated further that:

Even if the applicants could supply additional evidence tracing the claim of title back farther than the initial stated entry, 1922, the application must fail because the sale in 1922 was for unpaid taxes. A tax deed wipes out any former title to land and initiates a new title, and therefore terminates any adverse possession that may have been traceable to a transaction before 1901. W. D. Reams, A-30113, September 23, 1964.

In their statement of reasons for appeal, appellants concede that they do not qualify for a class 1 color-of-title claim but argue that they do qualify for a class 2 color-of-title claim. They contend that the subject land is "surrounded by private land and is of questionable value to the United States Government." They state that the United States "originally intended to issue a patent on said lands as it did on the adjoining lands but failed to do so through some unknown error." Moreover, appellants contend that the "tax sale in 1922 should be disregarded" because the State of Arkansas has released all right, title, or interest in and to land sold to the State prior to 1935 for nonpayment of taxes, for which the State has executed deeds.

[1] The Color of Title Act, supra, requires for a class 2 color-of-title claim that the applicant and his/her predecessors in interest have held the subject land "under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied by State and local governmental units." (Emphasis added.) 43 U.S.C. § 1068 (1976); see 43 CFR 2540.0-5(b).

Where the record does not show any instrument purporting on its face to convey the subject land not later than January 1, 1901, the applicant will not have established a meritorious class 2 color-of-title

claim. Mary C. Pemberton, 38 IBLA 118 (1978). The earliest document in appellants' chain of title is apparently a tax deed in 1922, well after January 1, 1901. Appellants have not presented a meritorious class 2 claim.

Moreover, as noted by BLM, the tax deed breaks any chain of title that may have begun prior to January 1, 1901, and initiates a new chain of title which does not satisfy the requirements for a class 2 color-of-title claim. Such a claim cannot include any time when alleged title was held by a political subdivision because of nonpayment of taxes. Estate of John C. Brinton, 25 IBLA 283 (1976). This reasoning is applicable regardless of whether the grantee under the tax deed has subsequently disclaimed any interest in the land.

Appellants have also failed to "itemize all information relating to tax levies and payments" in accordance with 43 CFR 2541.2(c)(2). Failure to do so is itself ample reason to reject an application. See Ivie G. Berry, 25 IBLA 213 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

